

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSE GUADALUPE PEREZ-FARIAS,)	NO. CV-05-3061-RHW
et al.,)	
)	REPORT AND RECOMMENDATION
Plaintiffs,)	
)	
vs.)	
)	
GLOBAL HORIZONS, INC., et)	
al.,)	
)	
Defendants.)	

BACKGROUND

On July 2, 2008, Mordechai Orian ("Orian") the president and chief strategic officer for Global Horizons, Inc. ("Global") appeared pursuant to the Court's order to show cause why Global has failed to obey the Court's orders to pay assessed monetary sanctions. Global's *pro hac vice* counsel, Chrystal Bobbitt, also appeared and addressed the Court.

The matter before the Court arises out of Global's abuse of the judicial process. Magistrate Judge Leavitt administered daily monetary sanctions against Global, payable to the Court, beginning on April 23, 2007. (Ct. Rec. 458). On July 11, 2007, Judge McDonald continued the enforcement of the daily sanctions set by Judge Leavitt. (Ct. Rec. 507). Judge Whaley also continued the enforcement of the daily sanctions and indicated the end of the daily toll, as of July 23, 2007. (Ct. Rec. 597). Global has made

1 no payment to the Court as directed by these judges.

2 On April 21, 2008, Judge Whaley referred to this Magistrate
3 Judge the matter of Global's failure to obey the orders of this
4 Court to pay the assessed monetary sanctions. (Ct. Rec. 871). On
5 April 22, 2008, the Court ordered Global Horizons, Inc. to pay the
6 previously ordered monetary sanctions no later than May 30, 2008.
7 (Ct. Rec. 874). The Court further ordered that should Global fail
8 to make timely payment to the Court, Global, by and through its
9 attorney, would be required to appear before the undersigned and
10 show cause why it has failed to obey the Court's orders to pay
11 monetary sanctions and why the monetary sanctions should not be
12 reduced to a judgment. (Ct. Rec. 874). Global did not make
13 payment to the Court on or before May 30, 2008. At a show cause
14 hearing on June 3, 2008, Global's local counsel, Gary Lofland,
15 appeared and reported he had no knowledge to answer a majority of
16 the Court's questions regarding Global's financial status. The
17 Court was not satisfied with Global's presentation at the show
18 cause hearing. The Court directed Mordechai Orian, the individual
19 identified by Global's counsel as most knowledgeable about
20 Global's finances, to appear at a supplemental show cause hearing.
21 (Ct. Rec. 893). The supplemental show cause hearing was held on
22 July 2, 2008. (Ct. Rec. 900). Additional documentation was
23 furnished by Global to the Court on July 16, 2008.

24 By way of history, on March 12, 2007, the Court entered an
25 order granting Plaintiffs' motion to compel discovery and for
26 sanctions against Global Horizons, Inc. (Ct. Rec. 274). Global
27 failed to respond to Plaintiffs' motion. The Court ordered
28 Defendant "Global Horizons, Inc." to pay Plaintiffs' \$400.00 and

1 to produce all documents requested in Plaintiffs' Third Set of
2 Requests for Production #11 and #12 and Plaintiffs' Fourth Set of
3 Requests for Production #6 as well as other information in
4 Global's possession. (Ct. Rec. 274). Global did not timely
5 produce that documentation.

6 On March 20, 2007, the Court entered another order granting
7 Plaintiffs' motion to compel discovery and for sanctions against
8 Global. (Ct. Rec. 298). Global again failed to respond to
9 Plaintiffs' motion. The Court ordered Defendant "Global Horizons,
10 Inc." to pay Plaintiffs \$600.00 and ordered production. Global,
11 again, did not produce that documentation within the time frame
12 ordered by the Court.

13 On April 19, 2007, the Court ordered Defendant "Global
14 Horizons, Inc." to produce all documents, as previously ordered,
15 by April 23, 2007. (Ct. Rec. 404). The Court ordered Global to
16 pay Plaintiffs \$1,000.00 for the cost of bringing the motion and
17 to pay Plaintiffs the \$1,000.00 previously imposed by the Court.
18 The Court further warned "Defendant Global Horizons, Inc." that
19 the failure to comply with this order shall result in sanctions,
20 in the amount of \$500.00 a day, each calender day, until it had
21 fully complied with the Court's orders.

22 On May 18, 2007, the Court ordered "Defendants," defined by
23 the Court in that order as "Global Horizons, Inc., and Mordechai
24 Orian," to pay sanctions for the failure to produce all documents
25 ordered to be produced. (Ct. Rec. 458). Global and Mordechai
26 Orian were ordered to produce all documents previously ordered to
27 be produced, pay to Plaintiffs \$2,000.00 for the costs that were
28 previously imposed, pay to Plaintiffs \$1,000.00 for the cost of

1 bringing the latest motion, and pay to the Court sanctions in the
2 amount of \$12,500.00, calculated at \$500.00 per day for each
3 calendar day from April 23, 2007 to May 18, 2007. (Ct. Rec. 458).
4 Defendants were warned that their continued failure to comply with
5 this Court's orders would result in continued monetary sanctions,
6 in the amount of \$500.00 a day, for each calendar day, until there
7 was full compliance, and could result in case dispositive
8 sanctions. (Ct. Rec. 458). On June 1, 2007, the Court received a
9 declaration of Defendant Mordechai Orian which stated, "Global
10 Horizons, Inc., does not have \$15,000 to pay to the Court or to
11 the Plaintiffs in this matter." (Ct. Rec. 491 at 2).

12 On July 11, 2007, Judge McDonald entered an order requiring
13 Global Defendants to comply with the earlier monetary sanctions
14 order of the Court and assessed additional, and continuing,
15 monetary sanctions for their continued disobedience. (Ct. Rec.
16 507). The Court ordered Defendants Global Horizons, Inc., and
17 Mordechai Orian to pay to the Court the monetary sanctions
18 previously imposed on May 18, 2007, in the amount of \$12,500.00
19 (Ct. Rec. 458), as well as the additional amount of \$27,000.00,
20 calculated at \$500.00 per day for each calendar day since the
21 initial imposition of sanctions to the date of that order, for
22 Defendants' continued refusal to comply with the Court's orders.
23 (Ct. Rec. 507). The Court further noted that monetary sanctions,
24 in the amount of \$500.00 a day, for each calendar day, would
25 continue until the Global Defendants provided full payment to the
26 Court. (Ct. Rec. 507). Mr. Orian was warned that if he did not
27 make payment to the Court, he would be required to appear before
28 the Court to face a charge of criminal contempt.

1 On July 31, 2007, Defendant Mordechai Orian filed a
2 declaration in opposition to criminal contempt. (Ct. Rec. 565).
3 The declaration commented on the financial struggles of Global and
4 indicated that Global could not afford to pay the sanctions
5 assessed. (Ct. Rec. 565). Mr. Orian also indicated surprise that
6 the sanctions were assessed against him individually.

7 On August 1, 2007, a contempt hearing was held. (Ct. Rec.
8 577). At the contempt hearing, the Court ordered Defendants
9 Global Horizons, Inc., and Mordechai Orian to pay the sanctions
10 levied by the Court on July 11, 2007. The Court indicated that
11 monetary sanctions, in the amount of \$500.00 a day, for each
12 calender day, would continue until these Defendants fully
13 complied. (Ct. Rec. 577).

14 On August 10, 2007, the Court assessed an additional
15 \$6,000.00 in sanctions against Global Horizons, Inc., and
16 Mordechai Orian, calculated at \$500.00 per day for each calendar
17 day from July 11, 2007 to July 23, 2007. (Ct. Rec. 597). The
18 Court also discontinued the daily monetary sanctions as of July
19 23, 2007, due to the Global Defendants' apparent compliance with
20 the Court's discovery orders on that date. (Ct. Rec. 566; Ct.
21 Rec. 568 at 9; Ct. Rec. 590). The order of continued monetary
22 sanctions, in the amount of \$500.00 per day for each calendar day
23 (Ct. Rec. 458, 507), was discontinued as of July 23, 2007. (Ct.
24 Rec. 597).

25 On September 7, 2007, the Court reviewed its previous orders
26 assessing sanctions against Global and Mordechai Orian. (Ct. Rec.
27 700). The Court noted that the compelled discovery was directed
28 solely at Global. The Court found no basis for holding Mordechai

1 Orian personally responsible for the monetary sanctions imposed at
2 that time. Accordingly, the Court released Mordechai Orian from
3 his individual obligation to pay all previously imposed monetary
4 sanctions. However, the Court held that Global remained
5 responsible for the sanctions previously imposed by the Court.
6 (Ct. Rec. 700 ¶ 10).

7 **DISCUSSION/FINDINGS OF FACT**

8 The purpose of the Court's July 2, 2008, show cause hearing
9 was to ascertain if Global was still a viable corporate entity and
10 to decide if it had had the financial wherewithal to pay any of
11 the sanctions from the time the Court first imposed those
12 sanctions beginning in April, 2007.

13 The Court had ordered Global to produce certain documents
14 that reflected its most current financial condition in advance of
15 the show cause hearing. Global's representatives did provide
16 certain documents, albeit incomplete. Counsel for Global agreed to
17 fax additional documents to the Court immediately so that the
18 documents would be complete. Those additional documents, still
19 incomplete, were finally furnished on July 16, 2008.

20 Global's President and Chief Strategic Officer, Orian, after
21 being placed under oath, testified for approximately 90 minutes in
22 response to questions asked of him by the Court. At the conclusion
23 of his testimony, Counsel for Global made a record as to reasons
24 there had not been any effort to pay the sanctions.

25 Global Horizons Inc. was incorporated by Orian in 1997. Its
26 principal business is/was labor contracting. The corporate stock
27 is owned 49% by Orian and 51% by Global Manpower LTD, an Israeli
28 entity. Global Manpower LTD is an entity that Orian and a woman

1 named Lebi Sigal control. Global Manpower LTD has not been active
2 for the past four to five years. Throughout Global's existence,
3 Orian has been the nominal head of the corporation and is
4 responsible for making its day-to-day business decisions. Global's
5 officers are Orian and Robin Rutt. Mr. Rutt served as the chief
6 financial officer of Global but is no longer associated with
7 Global and his whereabouts is unknown.

8 Global was debarred by the U.S. Department of Labor in
9 November, 2006 for a period of three years from further H-2A labor
10 certification applications. This debarment order resulted in the
11 cancellation or repudiation of several labor contracts that Global
12 might have profited from by performing.

13 Global's assets, according to its most recently filed Federal
14 Income Tax return for the fiscal year ending November, 2006,
15 consist of trade notes and accounts receivable, depreciable
16 personal property (mostly vehicles) and "other". Orian speculated
17 that "other" was some variety of account receivable but was unable
18 to further clarify or explain and did not furnish the appropriate
19 schedules from the income tax return to the Court for explanation.
20 Orian testified that the corporation does not own, nor has it ever
21 owned any real property. The Federal Income Tax return is also
22 notable for the sale of accounts receivable to Del Monte in the
23 sum of \$1.8 million treated in the tax return as long term capital
24 gain. No later Federal Income Tax returns have been filed by
25 Global according to the evidence before the Court.

26 The Court also examined documents produced by Global
27 described as payroll records. It is significant that Global
28 employees continued to receive salaries despite the corporation's

1 stated insolvency. No fewer than seven Global employees,
2 including Orian, are shown to have received pay during all of 2007
3 and most of those received pay during 2008. Gross salaries paid
4 during the month of December, 2007 exceeded \$20,000 to "Global"
5 employees. Orian explained that although Global has been defunct
6 since May of 2007, he has personally contributed funds to pay
7 employees. Additionally, a different corporation, also totally
8 owned and controlled by Orian named Digital Global Accounting,
9 currently provides the payroll checks for all employees, including
10 Ms. Bobbitt, the "In House Litigation Counsel at Global Horizons".
11 Orian testified that the payroll approaches \$30,000.00 per month.
12 The corporate office remains open. Outside counsel continue to be
13 retained. Multiple litigation matters continue to be addressed
14 and vigorously contested.

15 The Court was provided with copies of Global's bank
16 statements for the period from May 1, 2007 through September 28,
17 2007. These statements represent the main operating account at
18 Bank of America, account number 13970244. This account was linked
19 to at least two savings accounts and a payroll account. None of
20 the statements of the linked accounts were furnished to the Court.
21 Orion had signature power on these accounts. Bank of America
22 closed this account in November 2007.

23 An examination of these bank statements yields tributaries of
24 information that lead to one ocean of a conclusion: During this
25 period of self described insolvency and before closing its bank
26 account, Global had funds deposited to its operating accounts that
27 would have been more than sufficient to pay the Court imposed
28 sanctions had the corporation chosen to apply those funds to that

1 obligation and not elsewhere.

2 Several specific entries in the bank statements illustrate
3 this conclusion.

4 (1) Multiple wire transfers in May 2007 were made from the
5 operating account after sanctions began to be imposed to an entity
6 called "Adoption Worldwide LLC". These "contributions" or "loans"
7 (as Orian calls them) amounted to a total of \$9,000.00. As it
8 turns out, Adoption Worldwide LLC is a favorite charity of Orian,
9 one that he helped to found and supports, apparently to the
10 detriment of paying legitimate corporate creditors.

11 (2) A purchase on a debit card on 5/14/2007 for \$241.58 to
12 Ralph's, a grocery store in California. Orian says he authorized
13 food to be bought for his employees "many times." He denies this
14 purchase of food was for him personally, but a closer examination
15 of the records might yield information supporting a conclusion
16 that Orian was using the accounts for his personal purposes and
17 was commingling his funds with those belonging to the corporation.

18 (3) An online banking transfer on 6/15/2007 for \$20,000.00 to
19 savings account 2487. At this point in time, there would have
20 been no need to "save" anything since the business was closed and
21 insolvent, according to Orian.

22 (4) On 6/29/2007 a wire transfer into the account was made
23 from Digital Global Accounting in the sum of \$47,000.00. Orian
24 explained that this was likely for payroll, but again the
25 corporation, acting through its Chief Strategic Officer, made a
26 decision to pay other corporate obligations and ignore the
27 sanctions that had been imposed by the Court.

28 There are numerous other instances of funds being transferred

1 between and among the various linked bank accounts. Orian is a
2 very experienced and shrewd international businessman and it is
3 beyond the time constraints allowed this Court to delve into each
4 transaction of Global and Orian's related companies that might
5 shed light, rather than continued heat, on the issue of collection
6 of the sum due the Court.

7 Global is also subject to a large federal tax lien amounting
8 to somewhere in the neighborhood of \$4 million. A judgment of
9 \$819,686 was entered against Global on May 25, 2007 in the
10 District Court of Maryland. There are numerous other judgments,
11 liens and assessments against Global in other jurisdictions.

12 When Global began doing business in Washington state, the
13 State required it to post a corporate surety bond. This bond was
14 obtained through Platte River Insurance Company and Orian believed
15 it to be in the amount of \$150,000. Platte River Insurance
16 Company is a named defendant in this case. It is unknown if this
17 bond is available to respond to the Court's sanction orders.

18 Global has not filed for bankruptcy. Orian testified that he
19 did not want to do so, since the cost of hiring counsel would be
20 prohibitive and since there were no corporate assets remaining for
21 creditors to seize.

22 **RECOMMENDATIONS/CONCLUSIONS OF LAW**

23 Global is financially insolvent. Its debts far exceed its
24 assets and it is unable to meet its daily obligations of business.
25 Orian has made cash infusions of his own and others to Global in
26 order to keep the business operating, but any business of Global
27 is now being run through the books and records of Digital Global
28 Accounting, Inc. Funds were routinely being wire transferred

1 between Global and Digital Global Accounting, Inc. during the
2 months for which bank statements were furnished.

3 Global has failed and refused to pay any or all of the
4 sanctions determined to be owed by this Court. Global's arguments
5 that Judge Whaley never addressed the corporation's responsibility
6 to pay the sanctions in his September 7, 2007 order are without
7 merit. The corporation's responsibility to pay the sanctions is
8 now and has for many months, been clear. Furthermore, Global had
9 the financial means to pay all of the sanctions imposed at and
10 after the time those sanctions were first imposed. Global cannot
11 avoid its obligation to pay even if it did not have the money to
12 pay in a single payment. Sec v. Musella, 818 F.Supp. 600,602
13 (S.D.N.Y. 1993).

14 The Court cannot determine on the record before it whether
15 Global is the "alter ego" of Orian to the extent that the
16 corporate veil should be pierced and his personal assets should be
17 made available to respond to the sanctions imposed. It is the
18 recommendation of this Magistrate Judge that the sanctions be
19 reduced to a judgment in the sum of \$45,500.00 against Global
20 Horizons, Inc. and that counsel be employed to assist the Court in
21 making that determination and in assisting the Court in collecting
22 the judgment if reaching Orian's personal assets is deemed
23 feasible.

24 Further civil contempt proceedings against the corporation
25 would not be fruitful. Civil contempt sanctions are remedial.
26 United Mine Workers v. Bagwell, 512 U.S. 812, 828 (1994). This
27 Court has already imposed daily or per diem fines against the
28 corporation. Although Orian has not been totally forthcoming with

1 the documents requested of him as Chief Strategic Officer, he did
2 comply with the Court's Order to Show Cause by making himself
3 available to testify. This Court has already released Orian from
4 any obligation to pay the sanctions imposed against the
5 corporation personally. Court Record 700 ¶ 10.

6 Since Orian, on behalf of Global, insists on continuing to
7 defend the instant litigation, this Magistrate Judge would
8 recommend that the Court consider imposing case dispositive
9 sanctions against Global unless the total amount of sanctions is
10 paid.

11 The record of the show cause examination and the exhibits
12 admitted into evidence during Orian's examination have been
13 sealed. It is the recommendation that the record be unsealed and
14 made available to the other parties in this litigation.

15 **OBJECTIONS**

16 Any party may object to a magistrate judge's proposed
17 findings, recommendations or report within ten (10) days following
18 service with a copy thereof. Such party shall file written
19 objections with the Clerk of the Court and serve objections on all
20 parties, specifically identifying the portions to which objection
21 is being made, and the basis therefor. Any response to the
22 objection shall be filed within ten (10) days after receipt of the
23 objection. Attention is directed to Fed. R. Civ. P. 6(d), which
24 adds additional time after certain kinds of service.

25 A district judge will make a *de novo* determination of those
26 portions to which objection is made and may accept, reject, or
27 modify the magistrate judge's determination. The judge need not
28 conduct a new hearing or hear arguments and may consider the

1 magistrate judge's record and make an independent determination
2 thereon. The judge may, but is not required to, accept or
3 consider additional evidence, or may recommit the matter to the
4 magistrate judge with instructions. *United States v. Howell*, 231
5 F.3d 615, 621 (9th Cir. 2000); 28 U.S.C. § 636(b)(1)(B) and (C),
6 Fed. R. Civ. P. 72; LMR 4, Local Rules for the Eastern District of
7 Washington.

8 A magistrate judge's recommendation cannot be appealed to a
9 court of appeals; only the district judge's order or judgment can
10 be appealed.

11 The District Court Executive is directed to file this Report
12 and Recommendation and provide copies to counsel and the referring
13 district judge.

14 **DATED** this 21st day of July, 2008.

15
16 S/James P. Hutton
17 JAMES P. HUTTON
18 UNITED STATES MAGISTRATE JUDGE
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